

~~302 CMR: DEPARTMENT OF ENVIRONMENTAL MANAGEMENT~~ 301 CMR:
EXECUTIVE OFFICE OF ENERGY AND ENVIRONMENTAL AFFAIRS

~~302 CMR-5~~

301 CMR 24.00: OCEAN SANCTUARIES

Section

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24.01: Authority

~~302(1) 301 CMR 524.00 is promulgated by the Department of Environmental Management adopted pursuant to M.G.L. c. 21A, §§ 2(2), (5), (9), (10), (11), (13), (15), (16) and (28) in order to carry out the provisions of the Massachusetts Ocean Sanctuaries Act, M.G.L. c. 132A, §§ 4312A through 4616K and § 18, the Ocean Sanctuaries Act, as amended by An Act Relative to Oceans (Oceans Act), St. 2008, c. 114 and An Act Improving Drinking Water and Wastewater Infrastructure, St. 2014, c. 259.~~

524.02: Purpose

~~(1) 302 CMR 5.00 is promulgated in order to~~

~~(a) define and explain the language of M.G.L. c.132A, §§ 13 through 16 and 18.~~

~~(b) set out (1) The Massachusetts Ocean Sanctuaries Act establishes Ocean Sanctuaries, defines prohibited and allowed Activities in Ocean Sanctuaries, and requires Agencies to protect these Ocean Sanctuaries from exploitation, development, or Activity that would significantly alter or otherwise endanger their ecology or appearance in the issuance of Authorizations for Activities subject to jurisdiction.~~

(2) 301 CMR 24.00 is promulgated to fulfill, in part, the procedural means by which statutory responsibility of the Department will exercise its Office of Coastal Zone Management for the care, oversight, and control of Ocean Sanctuaries.

(3) 301 CMR 24.00 also defines, interprets, and explains provisions of the Ocean Sanctuaries Act, the Oceans Act, and An Act Improving Drinking Water and Wastewater Infrastructure. 301 CMR 24.00 establishes the procedures and requirements necessary for Agencies to carry out responsibilities under M.G.L. c. 132A §§ 13 through 16 and 18 these authorities.

(c) explain

(4) Nothing in 301 CMR 24.00 shall be construed to supersede existing general or special laws, or to confer rights and remedies in addition to those conferred by existing general or special laws.

24.03: Definitions

Act means the responsibilities of other state agencies under Massachusetts Ocean Sanctuaries Act, M.G.L. c. 132A, §§ 12A through 16 and 18, 16K and § 18.

(d) detail how the

Activities means activities, uses, or facilities described in M.G.L. c. 132A, §§ 15 and 16, and in 301 CMR 24.06.

Adjudicatory hearing means a hearing conducted pursuant to M.G.L. c. 30A §§ 9, 10, 10A, 11, and 12.

Advanced treatment means enhanced physical, chemical, or biological treatments that are used, in part, to remove nutrients, including nitrogen or phosphorus.

Agency means any agency, department, division, board, commission, or authority of the Commonwealth.

Applicant means any city, town, district, county or authority and has the legal ability to implement any form of wastewater disposal, including land application, and which applies for a new or modified discharge pursuant to the Act.

Authorization means certificates, licenses, permits, and approvals for proposed Activities.

Comprehensive Wastewater Management Plan or CWMP means a municipal or regional study, conducted in accordance with appropriate Department guidance, regulations, and policies, that evaluates alternatives and recommends an appropriate implementation strategy to properly manage wastewater in order to provide protection for the public health and safety of the environment, and is designed to ensure that goals associated with water quality standards set forth at 314 CMR 4.00 and TMDLs, if any TMDLs exist are met.

~~Department intends to ensure the inter-agency cooperation mandated by M.G.L. c. 132A, § 18.~~

~~(2) It is the intent of means the Department that 302 CMR 5.00 be consistent with and form a part of the Commonwealth's Coastal Zone Management Program (hereinafter "CZM Program") as it has been promulgated and defined by 301 CMR 20.00 issued pursuant to M.G.L. c. 21A and entitled "Establishment of the Coastal Zone Management Program by the Executive Office of Environmental Affairs". 301 CMR 20.00 establish the CZM policies, which are part of the CZM Program, as state environmental policy, and the Department shall carry them out in accordance with M.G.L. c. 21A, § 2. See 302 CMR 5.05(2) for a statement of those policies as they relate to M.G.L. c. 132A, §§ 13 through 16 and 18. Furthermore, the Department shall interpret its statutory authorities and implement its administrative procedures, policies and actions so as to be consistent with the CZM Program, except when of Environmental Protection.~~

~~(~~

~~Environmental Impact Report means a) to do so would require an action impermissible at law, or~~

~~(b) the Secretary, report prepared pursuant to the conflict resolution procedures of Massachusetts Environmental Policy Act, M.G.L. c. 21A, § 4 and of 301 CMR 20.00, has resolved any conflict and has determined that the CZM policies should or should not apply. 302 CMR 5.00, however, is adopted independently under M.G.L. c. 130, §§ 13 through 16 and 18 and would remain in full force and effect in the absence of the CZM Program or the 301 CMR 20.00. 30 §§ 61-62H.~~

~~(3) In accordance with M.G.L. c. 130, § 18, 302 CMR 5.00 does not require any permits other than those already required by law, but they do explain the responsibilities of other state agencies to make their policies, permits, licenses or any other action conform to M.G.L. c. 132A, § 18 requires.~~

5.03: Jurisdiction

~~304 CMR 5.00 shall be effective on July 14, 1978 in the five ocean sanctuaries defined in M.G.L. c. 132A, § 13(a) through (c).~~

5.04: Definitions

~~Agency means any board, body, commission, corps, council, department, division, office or administrative unit, however labeled, and any authority of any political subdivision which is specifically created as an authority under special or general law.~~

~~Cape Cod National Seashore means the area defined in Section 1 (a) of P. L. 87-126, 75 Stat. 284.~~

~~Care and control means management and shall have the same meaning as the phrase "general care and oversight" in M.G.L. c. 21, § 1, which provides that the Department shall have general responsibility for the "general care and oversight of the environmental management of the Commonwealth and of its adjacent waters" and that the Department has a mandate "to propose and carry out measures for the protection, conservation, control, use, increase and development thereof." "Care and control" shall also mean trusteeship in the sense of fiduciary protection. See 302 CMR 5.09 for a description of how the Department intends to exercise its "care and control" responsibility.~~

~~Commercial or industrial wastes means any useless, unwanted, discarded or environmentally harmful solid, liquid or gaseous materials resulting from commercial or industrial activities, including, but not limited to, garbage, rubbish, thermal discharges and sewage.~~

~~Department means the Department of Environmental Management, which is located on the 19th floor of 100 Cambridge Street, Boston 02202, telephone (617) 727-3163.~~

~~Extension of the lateral boundary of New Hampshire and Massachusetts means the lateral seaward boundary between the two states that is established a by interstate compact, agreement, judicial decision, or as otherwise provided by law.~~

~~Extension of the lateral boundary of Rhode Island and Massachusetts means the lateral seaward boundary between the two states that is established by interstate compact, agreement, judicial decision, or as otherwise provided by law.~~

Estuary means a semi-enclosed body of water that has a free connection with the open sea, within which seawater is measurably diluted with fresh water derived from outflowing fresh water rivers.

Existing discharge means a municipal, commercial, or industrial discharge at the volume and location approved and licensed by the appropriate federal and state agencies on July 15, 1970, in the case of the Cape Cod Ocean Sanctuary; on December 8, 1971, in the case of the Cape Cod Bay and Cape and Islands Ocean Sanctuaries; on June 27, 1972, in the case of the North Shore Ocean Sanctuary; and on December 30, 1976, in the case of the South Essex Ocean Sanctuary.

Marine boundary map means the marine boundary map of the Commonwealth prepared pursuant to the St. 1970-M.G.L., c. 810 and St. 1971-M.G.L., c. 1035 by the Department of Public Works, Division of Waterways, dated December 1971.

Mean low water line means the present mean low tide line, as established by the present arithmetic mean of the low water heights observed at low tide over a specific 19-year Metonic cycle (the National Tidal Datum Epoch) and shall be determined using the nautical charts, harbor charts series (1:50,000 and larger), prepared by the National Ocean Survey, U.S. Department of Commerce. For those coastal areas not covered by such published harbor charts, the mean low water line shall be determined using hydrographic survey data

~~obtainable from the National Ocean Survey. For the inland boundaries of the ocean sanctuaries, see the official maps of the ocean sanctuaries that are available for inspection at the office of the Ocean Sanctuaries Coordinator in the Department hydrographic data of the National Ocean Survey of the U.S. Department of Commerce.~~

Miles means nautical miles.

~~Offshore means seaward of the mean low water line.~~

~~Only feasible alternative means that, other than the proposed discharge, there is no method of solving the particular water pollution problem, including land application, that:~~
~~(a) will be~~ Modified discharge means an increase in volume or change in location of an existing discharge from a publicly owned treatment works.

Municipal means of or pertaining to any subdivision of the Commonwealth, including a city, town, county, region, district, or authority.

New discharge means a discharge from a publicly owned treatment works ~~not approved under the Act prior to February 1, 2014, nor authorized~~ by the appropriate federal and state agencies; ~~prior to February 1, 2014.~~

~~(b) is consistent with the intention and purposes of the Act; and~~

~~(c) is of equal or greater effectiveness in avoiding degradation of the water quality of the affected ocean sanctuary.~~

Ocean Sanctuary means any of the five areas established and defined by the Massachusetts Ocean Sanctuaries Act, M.G.L. c. 132A, § 13. These areas are delineated by boundaries described in the statute, as may be amended. The Office maintains the official maps of the Ocean Sanctuaries which may be updated from time to time.

Office means the Office of Coastal Zone Management.

Ocean Management Plan means the Massachusetts Ocean Management Plan developed and promulgated pursuant to St. 2008, c. 114, and M.G.L. c. 21A, § 4C.

Person means any agency or political subdivision of the federal government or Commonwealth, any state, public or private corporation or authority, individual, trust, firm, joint stock company, partnership, association, or other entity, and any officer, employee, or agent of said person, and any group of said persons.

Pretreatment means the reduction of the amount of pollutants, the elimination of pollutants, or the alteration of the nature of pollutant properties in wastewater prior to or in lieu of discharging such pollutants into a publicly owned treatment plant.

Proposed discharge means a new or modified discharge.

Public necessity and convenience means necessary to the public interest- or in the public interest. Agencies making the public necessity and convenience determination must do so according to 301 C.M.R. 24.05: Consistency of Agency Authorizations.

Publicly Owned Treatment Works or POTW means a sewage or septage treatment plant owned by a public entity.

Refuse means any useless, unwanted, discarded, or environmentally harmful solid waste material, whether combustible or non-combustible, and including, but not limited to, garbage or sludge resulting from any Activity.

Significantly alter means to substantially change or endanger the ecology or appearance of the ocean sanctuaries, including but not limited to: marine life and resources, including mammals, sea turtles, birds, fish, shellfish and other invertebrates, eelgrass, tidal flats, mussel reefs and other biogenic habitats; water quality including salinity, nutrients, pH, temperature; and hydrodynamic conditions including flushing and flow; sediment movement and transport dynamics.

Structure means any man-made object of any kind that is not temporarily fixed to the seabed or not temporarily moored in the waters above, as defined in Chapter 91 Waterways regulations at 310 CMR 9.02.

Total Maximum Daily Load (TMDL) means the sum of a receiving water's individual waste load allocations, load allocations, and natural background, which, together with a margin of safety that takes into account any lack of knowledge concerning the relationship between effluent limitations and water quality, represents the maximum amount of a pollutant that a waterbody can receive and still meet water quality standards in all seasons.

Wastes means any unwanted, discarded, or environmentally harmful solid, liquid, or gaseous materials resulting from commercial, municipal, domestic, or industrial Activities, including, but not limited to garbage, snow, thermal discharges, saline discharges, and sewage. Waste does not include approved and licensed dredge spoils, approved and licensed stormwater discharges, or snow disposal consistent with Department guidance.

24.04: Jurisdiction

(1) Activities listed in 301 CMR 24.06 that occur in all or part of an Ocean Sanctuary are subject to jurisdiction.

(2) Pursuant to the Act, allowed Activities listed in 301 CMR 24.06 and meeting the jurisdictional thresholds of the Ocean Management Plan as defined in 301 CMR 28.03 are

subject to the siting and performance standards of the Ocean Management Plan. The Ocean Management Plan identifies key components of Massachusetts estuarine and marine ecosystems, defined as Special, Sensitive or Unique Resources, and establishes standards to protect them. The Ocean Management Plan also establishes management guidance for balancing potential impacts to areas with Concentrations of Water-dependent Uses with new Activities in the Ocean Management Planning Area. The standards for protected resources and uses are contained in 301 CMR 28.04.

(3) Official maps of the Ocean Sanctuaries are developed and maintained by the Office and available at www.mass.gov/cea/agencies/czm/program-areas/mapping-and-data-management/moris/ or from the Office. From time to time, the Office may change the landward boundary of an Ocean Sanctuary to extend inward in rivers, bays, harbors, or coves to include environmentally sensitive areas. Procedures for map revisions are contained in 301 CMR 24.08.

24.05: Consistency of Agency Authorizations

(1) It shall be the responsibility of all Agencies to ensure that all authorizations for any proposed Activities in a Ocean Sanctuary are consistent, to the maximum extent practicable, with the provisions of the Act and these regulations.

(2) An agency authorizing an allowed Activity, shall include a determination in its M.G.L. c. 30, § 61, findings pursuant to MEPA, that all feasible measures have been taken such that its approval of the Activity is consistent with the Act and that it has complied with all of the applicable legal performance standards with respect to assuring the no significant alteration standard for the ocean sanctuaries is met. The Agency shall specify any measures required to achieve consistency with the standard, the Person or Agency responsible for funding and implementing such measures, and the anticipated implementation schedule that will ensure that the measures shall be implemented prior to, or when appropriate, in relation to the timing of unavoidable impacts.

(3) In accordance with M.G.L. c. 132A, § 16, in the determination of a project's public necessity and convenience, this standard shall be administered by the ~~applicable state agency otherwise involved in approving the project,~~ Department in its Chapter 91 licensing under 310 CMR 9.00 and by the Office in its federal consistency determination under 301 CMR 21.00, as applicable, and subject to the general oversight function of the ~~Department~~Office as described in 302 CMR 5.09. In applying this standard ~~the applicable state agency~~in the review of an applicant's license or consistency certification, the agencies shall consider the following factors:

(a) the ~~financial~~project's purpose, need, and ~~/or technical~~ the public it serves;

- (b) the benefits and detriments to the public and public interest, including effects on the environment; on public health, safety and wellbeing; on navigation and commerce, including recreational and commercial fishing, recreation boating, shipping, and transportation; and on recreation and recreational uses;
- (c) the applicant's demonstrated ability ~~of the person proposing the project~~ to build and maintain the project properly; whether the facility or use, if any, existing at the time the agency approval is requested is inadequate; whether either the public, which may be represented by several individuals or a representative group, demonstrates a need for the facility or use or that appropriate state or local public officials deem the facility or use necessary for the public's safety or welfare; whether the proposed facility or use will serve the public interest; whether the proposed facility or use will seriously alter or otherwise endanger the ecology or appearance of the ocean, the seabed or subsoil thereof, or the Cape Cod National Seashore; and, and decommission structures and facilities on public tidelands;
- (d) the extent to which existing uses or facilities will be affected by the proposed facility or use; and
- (e) the project's consistency with the Ocean Management Plan.

24.06: Prohibited and Allowed Activities

(1) Prohibited Activities in ocean sanctuaries. In all cases the agency shall active of the ocean sanctuaries, the following Activities are prohibited.

(a) Prohibited unconditionally:

1. Drilling or removal of gases or oils.
2. Commercial advertising, where advertising is the primary intent.
3. Incineration of refuse on, or in, vessels.

(b) Prohibited with exceptions:

1. The dumping or discharge of commercial, municipal, domestic, or industrial wastes except as allowed in 301 CMR 24.06(2).
2. The drilling or removal of minerals except as allowed in 301 CMR 24.06(2)(g).
3. The construction or operation of offshore or floating electric generating stations except as allowed in 301 CMR 24.06(2)(j).
4. The building or laying of structures on the seabed or subsoil except as allowed in 301 CMR 24.06(2).

(2) Allowed Activities in ocean sanctuaries. The following Activities are allowed, provided they receive all required authorizations:

- (a) Transient, vessel-based Activities, including but not limited to: commercial and recreational fishing, shipping, fuel transport, passenger transport, recreational boating, wildlife viewing, scientific research, and U.S. Coast Guard and military operations.
- (b) The operation and maintenance of approved and licensed discharges from existing municipal, commercial, or industrial facilities but not any change in or extension of associated structures or uses unless permitted by 301 CMR 24.07.
- (c) A new or modified discharge of municipal wastewater from a publicly owned treatment works as approved by the Department according to 301 CMR 24.07.
- (d) Discharges from facilities designed to abate existing discharges exclusively from combined sewer overflows (CSOs) when such facilities are approved by the Department and when existing discharges from CSOs degrade or threaten to degrade the designated ocean sanctuary.
- (e) Discharges from vessels, except sewage, when allowed in accordance with the appropriate state and/or federal approvals and licenses.
- (f) Dredging for navigational purposes.
- (g) The extraction of sand and gravel solely for beach nourishment and restoration and shore protection or as incidental to other allowed and permitted Activities.
- (h) The harvesting and propagation of fish and shellfish in all forms, so long as the Office and the Department of Fish and Game are satisfied that the Activities are carried on in accordance with sound conservation practices designed to maintain, increase, or restore existing finfish or shellfish stocks by the management of resources.
- (i) Temporary educational and scientific Activities jointly permitted by appropriate state agencies.
- (j) The construction and operation of offshore or floating electric generating facilities only if:
 - 1. Such electric generating facilities are used on an emergency and temporary basis for supply of energy and otherwise consistent with the Ocean Management Plan; or
 - 2. In areas other than the Cape Cod Ocean Sanctuary, such electric generating facilities are appropriately-scaled renewable energy facilities as defined by the Ocean Management Plan, and provided the renewable energy facility is consistent with the Ocean Management Plan and 301 CMR 28.00.
- (k) The building or laying of structures on the seabed or subsoil only if:
 - 1. Such structures are temporary and do not meet the definition of “structure” at 301 CMR 9.02; or
 - 2. Except in the Cape Cod Ocean Sanctuary, such structures are associated with the generation, transmission, and distribution of electric power, including the construction, reconstruction, operation and maintenance of industrial liquid coolant discharge and intake systems, unless such structures are otherwise prohibited by section (1)(b)3, above; or

3. Structures associated with the operation and maintenance of existing municipal, commercial or industrial facilities; or
4. The laying of cables approved by the Department of Public Utilities or the Department of Telecommunications and Cable; or
5. Channel and shore protection projects; or
6. Navigational projects and aids; or
7. Other projects authorized under M.G.L. c. 91 and 310 CMR 9.00 deemed to be of public necessity and convenience, including but not limited to: natural gas lines, water mains, and wastewater and stormwater pipes; or
8. Structures associated with the harvesting and propagation of fish and shellfish in all forms, provided such Activities are consistent with sound conservation practices as determined by the Office and the Department of Fish and Game; or
9. Other improvements not specifically prohibited in 301 C.M.R. 24.06(1) that are consistent with the Act, including maintenance and repair of existing structures but not any change in or extension of such structures.

24.07: New or Modified Discharge

(1) General

- (a) M.G.L. c. 132A, §§ 16G - 16K allow for a new or modified discharge from a POTW to an ocean sanctuary if approved by the Department pursuant to the statutory policy expressed in M.G.L. c. 132A, § 14 and Act and these regulations.
- (b) The applicant for a new or modified discharge is also required to obtain all other applicable federal, state and local authorizations, including a surface water discharge permit in accordance with 314 CMR 3.00.

(2) Application Requirements

- (a) Applicants may request a pre-application conference with the Department to help clarify application submission requirements, but such a pre-application conference is not required. If a pre-application conference is held, the Office shall be included, and the Department may invite other state agencies as applicable.
- (b) An application for a new or modified discharge must include the following:
 1. The Department's application form for a new or modified discharge to an ocean sanctuary.
 2. A description, coordinates, and maps of the proposed modified or new discharge, including location(s), average daily flow, proposed level of treatment, design capacity, existing and proposed outfall locations and alignment of discharge pipes and other related structures, a summary of any proposed changes to existing discharge conditions, effluent quality or characteristics. Maps shall consider 302 CMR 5.00 and any show the boundaries of the affected ocean sanctuary and demarcate the following: Areas of Critical Environmental Concern; Special, Sensitive or Unique

Resources from the Ocean Management Plan; marine life and natural resources, including but not limited to wetland resource areas, shellfish beds, eelgrass beds, habitats of endangered and threatened species, species of special concern; fisheries resources, including but not limited to commercial and recreational fishing areas, spawning sites, nursery and forage areas, and migratory pathways or areas necessary for other functions or critical stages in the life cycle of economically or recreationally important species;
Concentrations of Water-dependent Uses from the Ocean Management Plan; recreational resources including, but not limited to, bathing beaches, boating areas and scenic areas; and water quality classification(s) of affected waters.
3. A final CWMP approved by the department.
4. A final environmental impact report and certificate with the Secretary's findings and determinations made by the Commissioner in determining whether the public necessity and convenience standard has been met.

Refuse means any useless unwanted, discarded or environmentally harmful solid material, whether combustible or non-combustible, and including, but not limited to, garbage, rubbish or sludge resulting from any activity.

Seriously alter includes, but is not limited to, one or more of the following actions:

- (a) removing, excavating, or dredging any soil, sand, gravel, or other minerals or aggregate material of any kind in any significant amounts;
 - (b) changing drainage or flushing characteristics, salinity distribution, sedimentation or flow patterns, flood storage areas or the water table, to more than a negligible extent;
 - (c) dumping, discharging, or filling with any material of any kind that could significantly degrade
5. A detailed evaluation of the receiving water body, including the data, information, results and conclusions from the following surveys and investigations establishing, at a minimum, a two year baseline:
- (a) water quality;
 - (d) driving pilings or erecting buildings, structures or obstructions of any kind of any significant size or quantity, whether or not they interfere with the flow of water;
 - (e) destroying or adversely affecting in more than a negligible way any plant or animal life
- monitoring, including shellfish and fisheries;
- (f) changing thenutrients, temperature, biochemicalpH, dissolved oxygen demand (BOD) or other natural, water clarity;
- characteristics of the water so that there is a more than negligible adverse effect on the marine environment;
- (g) significantly increasing the development of already developed areas;
 - (h) developing any previously undeveloped or natural areas.

Solid waste material has the same meaning as refuse.

~~Sound conservation practices means practices designed to maintain, increase or restore existing finfish or shellfish stocks by the management of resources.~~

~~Structure means any man-made object of any kind that is not temporarily fixed to the seabed, or temporarily moored in the waters above. (See 302 CMR 5.05(2) regarding additional definitions.)~~

~~5.05: Environmental Policies~~

~~(1) Insofar as they relate to the responsibility of the Department to protect the ocean sanctuaries from any exploitation, development or activity that would seriously alter or otherwise endanger their ecology or appearance or the Cape Cod National Seashore, the environmental policy of the Department shall include, but not be limited to, the following policies:-~~

- ~~(a) Protecting ecologically significant resource areas (salt marshes, shellfish beds, dunes, beaches, barrier beaches, and salt ponds) for their contribution to marine productivity and value as natural habitats and storm buffers. (CZM Policy No. 1).~~
- ~~(b) Protecting complexes of marine resource areas of unique productivity (Areas for Preservation or Restoration (APRs)/ Areas of Critical Environmental Concern (ACEC's); ensuring that activities in or impacting such complexes allowed by 302 CMR 5.08(1) through (9) are designed and carried out to minimize adverse effects on marine productivity, habitat values, water quality and storm buffering of the entire complex. (CZM Policy No. 2).~~
- ~~(c) Supporting the attainment of the national water quality goals for all waters within the ocean sanctuaries through coordination with existing water quality planning and management activities; ensuring that all activities in the ocean sanctuaries allowed by 302 CMR 5.08(1) through (9) are consistent with federal and state effluent limitations and water quality standards. (CZM Policy No. 3).~~
- ~~(d) Ensuring that construction in the ocean sanctuaries allowed by 302 CMR 5.08(1) through (9) is conditioned so as to minimize interference with water circulation and sediment transport and to preserve water quality and marine productivity; ensuring that flood or erosion control projects allowed by 302 CMR 5.08(1) through (9) are issued permits only after it has been determined by the permitting agency that there will be no significant adverse effects on the project site or adjacent or down coast areas. (CZM Policy No. 4).~~
- ~~(e) Ensuring that dredging and disposal of dredged material allowed by 302 CMR 5.08(1) through (9) minimize adverse effects on water quality, physical processes, marine productivity and public health. (CZM Policy No. 5).~~
- ~~(f) Accommodating off-shore sand and gravel mining needs allowed by 302 CMR 5.08(1) through (9) in areas and in ways that will not adversely affect resources and navigation. (CZM Policy No. 6).~~
- ~~(g) Encouraging the location of maritime commerce and development allowed by 302 CMR 5.08(1) through (9) in segments of urban waterfronts designated as port~~

~~areas by the Division of Waterways and preventing the exclusion of maritime-dependent industrial uses within those areas that require the use of lands subject to tidelands licenses. (CZM Policy No. 7).-~~

~~(h) Accommodating the exploration, development and production of off-shore oil and gas resources while ensuring that any agency issuing a permit for any such activity allowed by 302 CMR 5.08(1) through (9) requires such exploration, development or production to minimize impacts on the environment, especially with respect to fisheries, water quality and wildlife and on the recreational values of the coast, and to minimize conflicts with other maritime dependent uses of coastal waters or lands; encouraging maritime dependent facilities serving supply, support or transfer functions to locate in existing developed ports. (CZM Policy No. 9a).-~~

~~(i) Ensuring that any agency issuing a permit for any development in an ocean sanctuary allowed by 302 CMR 5.08(1) through (9) in or near a designated or registered historic district or site within any ocean sanctuary requires such development to respect the preservation intent of such areas and to minimize adverse impacts. (CZM Policy No. 12).-~~

~~(j) Ensuring that any agency issuing a permit for and development in an ocean sanctuary allowed by 302 CMR 5.08(1) through (9) near a public recreation site within any ocean sanctuary requires such development to minimize adverse impacts. (CZM Policy No. 13).-~~

~~(k) Ensuring that state and federally funded public works projects proposed in any ocean sanctuary and allowed by 302 CMR 5.08(1) through (9) shall:-~~

- ~~1. not exacerbate existing hazards or damage natural buffers,;~~
- ~~2. be reasonably safe from flood and erosion related damage, and~~
- ~~3. not promote growth and development in damage prone or buffer areas, especially in undeveloped areas of critical environmental concern. (CZM Policy No. 15).-~~

~~(l) Emphasizing for federally or state-funded activities allowed by 302 CMR 5.08(1) through (9) the use of non-structural measures for protection from tidal flooding and erosion when feasible. (CZM Policy No. 17).-~~

~~(m) Promoting the widest possible public benefit from channel dredging allowed by 302 CMR 5.08(1) through (9); ensuring that designated ports and developed harbors are given highest priority in the allocation of federal and state dredging funds; ensuring that this dredging is consistent with marine environment policies. (CZM Policy No. 19).-~~

~~(n) Increasing the capacity of existing recreation areas by facilitating multiple use and by improving management, maintenance and public support facilities to the extent permitted by 302 CMR 5.08(1) through (9); resolving conflicting uses whenever possible through improved management rather than through exclusion of uses. (CZM Policy No. 22).-~~

~~(o) Expanding existing recreation facilities to the extent permitted by 302 CMR 5.08(1) through (9) and acquiring and developing new public areas for coastal recreational activities; giving highest priority to expansions or new acquisitions in-~~

~~regions of high need or where site availability is now limited; assuring that both transportation access and the recreational facilities are compatible with social and environmental characteristics of surrounding communities. (CZM Policy No. 24).~~

~~(p) Ensuring that state and federally funded transportation and wastewater projects permitted by 302 CMR 5.08(1) through (9) primarily serve existing developed areas; assigning highest priority to projects which meet the needs of urban and community development centers. (CZM Policy No. 26).~~

~~(2) The Department hereby adopts and incorporates in 302 CMR 5.05 the following definitions contained in the 301 CMR 20.00: "coastal zone," "salt marshes," "barrier beach system," "port area," "salt marsh," "salt pond," "shellfish bed," "dune," "beach" and "area of critical environmental concern."~~

~~(3) The Department hereby adopts and incorporates in 302 CMR 5.00 the Policy Appendix described in 301 CMR 20.05(4) of the 301 CMR 20.00 to the extent that the Policy Appendix applies to the policies set out in 302 CMR 5.05(1).~~

5.06: Miscellaneous Provisions

~~(1) Severability. If any provision of 302 CMR 5.00 is held to be invalid by a competent court of law, such invalidity shall not affect the application of any part of 302 CMR 5.00 not specifically held invalid.~~

~~(2) Amendments. 302 CMR 5.00 may be amended from time to time by the Department in accordance with the applicable provisions of M.G.L. c. 30A.~~

~~(3) Number and Gender. When appropriate words imparting the singular number may extend and be applied to several persons or things, words imparting the masculine gender may include the feminine and neuter, words imparting the feminine gender may include the masculine and neuter and words imparting the neuter gender may include the masculine and feminine.~~

5.07: Prohibited Activities

~~(1) In all of the five ocean sanctuaries the following activities are prohibited, except as they may specifically be allowed under 302 CMR 5.08(1) through (9):~~

- ~~(a) the building of any structure on the seabed or under the subsoil;~~
- ~~(b) the construction or operating of off-shore or floating electric generating stations;~~
- ~~(c) the removal of any minerals, such as sand or gravel, and the drilling for oil or gas;~~
- ~~(d) the dumping or discharge of any commercial or industrial wastes;~~
- ~~(e) commercial advertising by any means, including, but not limited to, structures or vessels or boats of any size;~~

~~(f) incineration of solid waste material or refuse on or in any vessel or boat of any size. The cooking of food by means of charcoal on any such vessel or boat shall not be considered such incineration.~~

5.08: Allowed Activities

~~(1) Except in the Cape Cod Ocean Sanctuary, and provided that all applicable certificates, licenses, permits and approvals required by federal, state or local law have been obtained and provided further that such activities, uses and facilities shall not be undertaken or located except in compliance with any applicable general or special statutes, rules, regulations or order lawfully promulgated, the planning, construction, reconstruction, operation or maintenance of an industrial liquid coolant discharge or intake system and any activity, use or facility associated with the generation, transmission or distribution of electrical power shall be permitted. All such activities shall be prohibited in the Cape Cod Ocean Sanctuary.~~

~~(2) With the exception of municipal wastewater treatment facilities and discharges (see 302-CMR 5.08(9)), the operation and maintenance of any municipal, commercial or industrial facility or discharge existing as of the following dates, which are the effective dates of the applicable original ocean sanctuaries acts, shall be allowed so long as such facility or discharge has been approved and licensed by the appropriate federal and state agencies:~~

~~Cape Cod Ocean Sanctuary July 15, 1970-~~

~~Cape Cod Bay and Cape and Islands Ocean Sanctuaries December 8, 1971-~~

~~North Shore Ocean Sanctuary June 27, 1972-~~

~~South Essex Ocean Sanctuary December 30, 1976-~~

~~No municipal, commercial or industrial facility or discharge built or occurring in any ocean sanctuary after those dates shall be permitted, except as specifically allowed elsewhere in 302-CMR 5.08(1) through (9).~~

~~(3) The laying of any electric or telephone cable shall be allowed if approved by the Department of Public Utilities.~~

~~(4) Any project authorized under M.G.L. c. 91, including channel and shore protection projects and navigation aids, shall be allowed, but only if it is not otherwise prohibited by 302-CMR 5.00, if it has received all required federal and/or state approvals and if the approving agency also finds that the project is one of public necessity and convenience.~~

~~(5) Any improvement to permitted structures or uses that is not specifically prohibited by M.G.L. c. 132A §§ 14, 15, and 18 shall be allowed so long as it does not change or extend such structures or uses and it is otherwise approved by appropriate state and federal agencies. Such an improvement may change or extend such structures or uses if it is specifically permitted by 302-CMR 5.08(1) through (9) and may include maintenance and repairs to such structures or uses. Any such improvements shall be consistent with M.G.L. c. 132A, §§ 14, 15 and 18.~~

~~(6) The harvesting and propagation of all finfish and shellfish may be allowed if the Department and the Department of Fisheries, Wildlife and Recreational Vehicles are satisfied that such activities will be carried out in accordance with sound conservation practices.~~

~~(7) Any educational and/or scientific project of a temporary nature may be allowed notwithstanding any restriction of 302 CMR 5.08, if it is otherwise approved by all applicable state agencies.~~

~~(8) The extraction of sand and gravel from the seabed and subsoil of any ocean sanctuary shall be allowed if such sand and gravel is to be used for a shore protection or beach restoration project; but such project must be approved by the Department of Environmental Quality Engineering. In the case of a shore protection project, it must, in addition, be found to be of public necessity and convenience by the Department of Environmental Quality Engineering and any other state agency from which a permit is required.~~

~~(9)(a) In the Cape Cod Ocean Sanctuary, the Cape Cod Bay Sanctuary, and the Cape and Island Ocean Sanctuary, no municipal wastewater treatment discharge into the ocean sanctuary shall be allowed.~~

~~(b) In the South Essex Ocean Sanctuary, such a~~ (b) fisheries survey, including finfish and shellfish;

~~(c) benthic sediments and infauna; and~~

~~(d) fisheries habitat including eelgrass.~~

6. Data, information, results and conclusions from the development of a site-specific hydrodynamic model illustrating tides, bathymetry, mixing zones and seasonal variations that estimate dilution and dispersion of nutrients, pathogens, and other relevant contaminants within the wastewater discharge.

7. A hydrologic evaluation of any affected aquifer(s), including evaluation of the effects of the new or modified discharge, and any planned and potential sewerage, on the recharge of the affected aquifer, and how those changes may affect drinking water supplies or natural resources.

8. An evaluation of the commercial and recreational fisheries at the project site, in the embayment and estuary, and in the affected ocean sanctuary, including the specific existing and potential fisheries, and the value of the fisheries. The evaluation must include an analysis of potential closures due to public health requirements including the potential extent of the mandatory shellfish bed closures to meet prescribed standards in the U.S. Food and Drug Administration's National Shellfish Sanitation Program Guide for the Control of Molluscan Shellfish. The evaluation shall also include potential impacts from the proposed outfall structure on normal operation of fishing vessels or equipment.

9. A proposed long-term monitoring plan to document that any new or

modified discharge would continue to meet the intent of the Act, the standards of 301 CMR 24.07(3), and other applicable laws and regulations.

10. Documentation, detailed analysis, and supporting evidence demonstrating how the new or modified discharge meets the requirements and standards in 301 CMR 24.07(3).

(c) The information required in 301 CMR 24.07(2)(b) should be prepared, to the extent possible, and submitted as part of the required Environmental Impact Report.

(3) Standards for Approval

(a) In its review of an application pursuant to 301 CMR 24.07(2), the Department shall consider the information provided in the application and supplementary material, including documentation of planned mitigation efforts, requested and provided during the application and review process, correspondence and input from the Office and other affected agencies, and testimony and comments provided during public hearing and comment.

(b) The Department may approve an application for a new or modified discharge only if the applicant has demonstrated that all the following requirements are met:

1. The new or modified discharge shall be consistent with the intent and purpose of the Act.

2. The new or modified discharge shall be allowed only if it is: meet the water quality standards of the receiving water body

1. the only feasible alternative to a water pollution problem;

2-3. The new or modified discharge shall protect the appearance, ecology, and marine resources of the ocean sanctuary.

4. The new or modified discharge shall meet the United States Environmental Protection Agency's approved TMDL, if any, on any affected receiving water bodies.

5. The applicant has adopted and implemented a plan, approved by the Department, requiring the pretreatment of all commercial and industrial wastes discharged to the POTW.

6. The applicant has adopted and implemented a program for water conservation according to the guidelines established by the Water Resources Commission.

7. The applicant has adopted and implemented a plan, approved by the Department, to control and minimize inflow and infiltration.

8. The applicant has adopted and implemented a plan, approved by the Department, to control any combined sewer overflows.

9. The new or modified discharge shall not significantly affect the quality or quantity of existing or proposed water supplies by reducing ground or surface water replenishment.

10. The new or modified discharge is consistent with the intention policies and purpose plans of the Office.

11. The new or modified discharge and treatment plans shall be consistent

with all applicable federal, state, and local laws, ordinances, by-laws, rules and regulations protecting the environment, including but not limited to, the requirements of M.G.L. c. 132A, § 21, c. 91, c. 130 and c. 131.

12. The new or modified discharge, including the outfall structure, shall not adversely impact marine fisheries or interfere with fishing grounds or the normal operation of fishing vessels.

13 through 16 and 18; and. For new discharges in the Cape and Islands Ocean Sanctuary, the Cape Cod Ocean Sanctuary and the Cape Cod Bay Ocean Sanctuary, the discharge shall receive advanced treatment, disinfection and such other treatment to remove nutrients, pathogens or other pollutants to avoid degradation of the ecology, appearance and marine resources of the sanctuary and to meet water quality standards and any applicable TMDLs. Chlorinated disinfection shall not occur unless it is followed by dechlorination prior to discharge .

3. approved and licensed by the federal and state agencies that have jurisdiction over the facility or discharge at the time it is proposed to be built.

14. In the Cape Cod Bay Ocean Sanctuary, within Plymouth, Kingston, Duxbury Bay, landward of a line between Gurnet Point and Rocky Point, no new or modified discharge shall be authorized in a depth of water that at mean low tide is less than 30 feet.

(4) Review and Decision on Application.

The review and decision as to whether a proposed discharge is the only feasible alternative on an application made pursuant to 301 CMR 24.07 shall be made by the Department in consultation with other appropriate state agencies.

(c) In the North Shore Ocean Sanctuary such a discharge shall be allowed only if:

1. all the requirements of 302 CMR 5.08(9)(b) are met;
2. construction of the facility was commenced prior to January 1, 1978 or the municipality proposing such a discharge was awarded a federal or state grant for construction of the facility prior to January 1, 1978;
3. the waste from such a discharge has been treated by the best practical means; and
4. the discharge is in accordance with plans that have been developed under the provisions of M.G.L. c. 21, § 27(10). Such plans are subject to approval of the Division of Water Pollution Control after a public hearing.

5.09: Oversight by the Department

(1) The Responsibility of the Department. In accordance with M.G.L. c. 132A, § 14, the Department shall have the responsibility of exercising the "care and control" of the ocean sanctuaries. Because M.G.L. c. 132A, § 18 that the Department "shall not require any additional permits," the Department shall act as a trustee of the resources of the ocean sanctuaries rather than as a permitting agency for specific activities. In that role as trustee the Department shall ensure that the ocean sanctuaries shall be protected from any exploitation,

development, or activity that would seriously alter or otherwise endanger the ecology or the appearance of the ocean, the seabed, or subsoil thereof, or the Cape Cod National Seashore. In carrying out this fiduciary responsibility, the Department shall aggressively seek to restrain any prohibited activity by whatever means it has available, including assistance from the Attorney General pursuant to M.G.L. c. 132A, § 18.

(2) Review by the Department. In carrying out its "care and control" responsibility, the Department shall examine at least annually the permitting procedures and other activities of all other state agencies insofar as they relate to the ocean sanctuaries. Such activities shall include, but not be limited to, the granting of permits or the construction or funding of any project. Such procedures and activities shall be evaluated in terms of whether all reasonable measures have been taken by the agency to permit, condition, or prohibit activities in order to protect the ocean sanctuaries from activity that would seriously alter or otherwise endanger the ecology or the appearance of the ocean, the seabed, or subsoil thereof, or the Cape Cod National Seashore. If the Department finds that such procedures are inadequate for protecting the ocean sanctuaries, it shall proceed in accordance with the provisions of M.G.L. c. 132A, §§ 13 through 16 and 18, it shall initiate informal discussions with the licensing or permitting agency in an attempt to reconcile any differences. If the Department finds that such informal discussions fail to reconcile any differences, it shall pursue any other means available to it to resolve the conflict. If the other agency is within the Executive Office of Environmental Affairs (EOEA), the Department shall ask the Secretary of EOEA to resolve the conflict pursuant to M.G.L. c. 21A, § 4(3), if applicable, and applicable regulations. If the agency is not within EOEA, the Department shall act pursuant to M.G.L. c. 30, § 5. It shall be the responsibility of all state agencies to issue, deny or condition permits or licenses or to conduct their activities consistently with the provisions of M.G.L. c. 132A, § 18. In addition, pursuant to M.G.L. c. 132A, § 18, such agencies shall confer and consult with the Department's Ocean Sanctuaries Coordinator to ensure such consistency. An agency shall consult with the Department's Ocean Sanctuaries Coordinator whenever it has any question about the interpretation of M.G.L. c. 132A, §§ 13 through 16 and 18 or 302 CMR 5.00, or whether a proposed activity is consistent with M.G.L. c. 132A, §§ 13 through 16 and 18. Department's regulations at 314 CMR 2.00 for an individual surface water discharge permit except as follows:

(3) Ocean Sanctuaries Coordinator. The Department shall designate an Ocean Sanctuaries Coordinator who shall be thoroughly familiar with M.G.L. c. 132A, §§ 13 through 16 and 18, 302 CMR 5.00, the CZM Program and the applicable statutes and regulations governing the activities of other state and/or federal agencies in the ocean sanctuaries. The Ocean Sanctuaries Coordinator shall be responsible, under the direction of the Commissioner of the Department, for carrying out the Department's responsibilities under 302 CMR 5.09(1) and 5.09(2). The Ocean Sanctuaries Coordinator may perform or cause to be performed any further studies or site investigations that may be required to determine whether a proposed action is consistent with 302 CMR 132A, §§ 13 through 16 and 18. The Ocean Sanctuaries Coordinator shall consult the Coastal Zone Management Office whenever a question

~~regarding a CZM policy arises. He may consult the applicable regional chapter of the CZM Program and/or contact the applicable regional advisory council for guidance in the application of the CZM policies to the region and to the site. The Department shall, in appropriate cases, intervene in any adjudicatory hearing relating to an ocean sanctuary.~~

~~(4) The Commissioner of the Department may, in consultation with the Ocean Sanctuaries Coordinator or any state or federal agency, make a determination regarding an interpretation of M.G.L. c. 132A, § 18 or their applicability to a particular situation. Such a determination may be distributed to other state agencies when the issue is one of broad public interest. Such determinations shall form a body of administrative decisions for use in applying the provisions of M.G.L. c. 132A, §§ 13 through 16 and 18 and 302 CMR 5.00 consistently, but they shall not be binding on any other agency.~~

5.11: Ocean Sanctuaries Maps

~~(1) Maps Adopted 302 CMR 5.00 officially adopt maps prepared by the Department and CZM establishing the seaward and inland boundaries of the five ocean sanctuaries. These maps replace all previous ocean sanctuaries maps and may from time to time be updated, amended or modified by the Department.~~

~~(2)(a) The Department's public notice in accordance with 314 CMR 2.06 shall include notice of a public hearing. The Department shall also provide individual notice to all municipalities bordering the affected sanctuary.~~

~~(b) When the Department issues the final permit in accordance with 314 CMR 2.08, it shall also provide individual notice of the final permit to any person commenting on the application and draft permit, and to all municipalities bordering the affected sanctuary.~~

~~(c) The final permit will become effective 30 days after issuance unless any person aggrieved by the decision requests an adjudicatory hearing prior to the expiration of 30 days.~~

~~(d) The final decision of the Department after an adjudicatory hearing, if any, shall take effect within 30 days, unless an appeal is taken under M.G.L. c. 30A, § 14, prior to the expiration of 30 days.~~

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24.08: Procedure for ~~Change~~Map Revisions

~~(1) The Office may revise the official maps of the Ocean Sanctuaries to change the landward boundary of an Ocean Sanctuary to extend inward in rivers, bays, harbors, or coves to include environmentally sensitive areas or to make corrections or adjustments to address technical discrepancies or errors, or to clarify intent or meaning.~~

~~(2) Any ~~changes~~proposed revisions to the maps shall be proposed to or by the Ocean Sanctuaries Coordinator and reviewed by a committee consisting of the Coordinator or his~~

~~designee(s) and a CZM representative(s). A change to the maps will become official when so designated by the Commissioner and announced by the Office and noticed in the *Environmental Monitor* for a 21-day public comment period. The notice shall describe the proposed revision, the rationale for the change and provide maps clearly indicating the change.~~

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~~REGULATORY AUTHORITY~~

~~302 CMR 5.00: M.G.L. c. 21A, §§ 2(2), (5), (9) through (11), (13), (15), (16), and (28); c. 132A, §§ 13 through 16, 18.~~

(3) After the close of the public comment period, the Office will make a final decision and issue final versions of the Ocean Sanctuaries maps. This decision will be noticed in the *Environmental Monitor*.

24.99: Severability

If any section or clause of 301 CMR 28.00 is held invalid or unconstitutional by a court of competent jurisdiction, the remainder shall not be affected thereby.